

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the proposed)
amendment of ARM 4.10.1806 relating to)
waste pesticide disposal and recyclable)
plastic container fees)

NOTICE OF PUBLIC HEARING ON
PROPOSED AMENDMENT

TO: All Concerned Persons

1. On August 7, 2008, at 10:00 a.m. the Montana Department of Agriculture will hold a public hearing in Room 225 of the Scott Hart Building, 303 N. Roberts at Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Department of Agriculture will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Agriculture no later than 5:00 p.m. on July 31, 2008, to advise us of the nature of the accommodation that you need. Please contact Cort Jensen at the Montana Department of Agriculture, 303 North Roberts, P.O. Box 200201, Helena, MT 59620-0201; Phone: (406) 444-3144; Fax: (406) 444-5409; or e-mail: agr@mt.gov.

3. The rule as proposed to be amended provides as follows, stricken matter interlined, new matter underlined:

4.10.1806 FEES (1) Participants in the disposal program ~~must~~ may be required to pay a fee commensurate with department program costs. of \$1.00 per pound for disposal of acceptable pesticides in which the total quantity is less than or equal to 200 pounds. The minimum charge for participation in the program will be \$5.00. The fee will be set by the director annually by June 30, and will not exceed \$2 per pound.

~~(2) Participants in the disposal program who dispose of total quantities of acceptable pesticides greater than 200 pounds must pay a fee of \$1.00 per pound for the first 200 pounds and \$.50 per pound for additional amounts over 200 pounds.~~

~~(3) The department may elect to accept pesticides containing dioxins into the disposal program at a higher fee to the participant.~~

~~(4)~~ (2) Participants who submit recyclable pesticide containers to the program ~~must~~ may be required to pay a fee of \$2.00 per container commensurate with department program costs for recycling. The fee will be set by the director annually by June 30, and will not exceed 50 cents per pound.

(3) Fees for pesticide disposal and plastic container recycling may exceed the fees set in (1) and (2) for pesticides or containers that have handling and/or disposal requirements resulting in costs exceeding the fees set under (1) and (2). The fee for these pesticides or containers will not exceed the cost of disposal or recycling.

(5) through (6)(d) remain the same, but are renumbered (4) through (5)(d).

AUTH: 80-8-111, MCA

IMP: 80-8-111, MCA

REASON: The proposed change in the rule to a fee commensurate with program cost will allow the department flexibility to set fees as the costs of the disposal and recycling program change. The cost of pesticide disposal has both increased and decreased since the program's inception in 1994 reflecting cost variations and competition within the disposal industry. Cost may change on an annual basis. A fee commensurate with program costs would permit the department to adjust fees annually to match costs. A flexible fee schedule would also permit the department to implement program participation incentives such as offering no fee for disposal of amounts below a set poundage to encourage the participation of small pesticide users and small farms. Historically, program cost has been less than the revenue generated resulting in a carryover. Surveys and comments from pesticide users indicate that some low volume pesticide users have not participated in the disposal program because they felt the cost for disposal was too high.

The current fee for plastic container recycling is \$2 per container which exceeds the recycling cost for smaller (2.5 gallon) containers. The proposed recycling fee, "not to exceed 50 cents per pound" should cover most recycling costs.

ECONOMIC IMPACT: The pesticide disposal program offered by the department on an annual basis is available to all residents of Montana. Program participation varies by year and by location, however on average, 45-60 participants use the program in any given year.

The intent of the proposed rule change is to make the pesticide disposal program where the revenues would not exceed expenditures over a long-term average.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Cort Jensen at the Montana Department of Agriculture, 303 North Roberts, P.O. Box 200201, Helena, MT 59620-0201; Fax: (406) 444-5409; or e-mail: agr@mt.gov. Any comments must be received no later than 5:00 p.m. on August 14, 2008.

5. The Department of Agriculture maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name, e-mail, and mailing address of the person and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Montana Department of Agriculture, 303 North Roberts, P.O. Box 200201, Helena, MT 59620-0201; Fax: (406) 444-5409; or e-mail: agr@mt.gov or

may be made by completing a request form at any rules hearing held by the Department of Agriculture.

6. An electronic copy of this Notice of Proposed Amendment is available through the department's web site at www.agr.mt.gov, under the Administrative Rules section. The department strives to make the electronic copy of the Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

7. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

DEPARTMENT OF AGRICULTURE

/s/ Ron de Yong
Ron de Yong, Director

/s/ Cort Jensen
Cort Jensen, Rule Reviewer

Certified to the Secretary of State, July 7, 2008.